

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KING SOLOMON,

Plaintiff,

v.

TAPIA,

Defendant.

Case No. 1:22-cv-01604-KES-HBK (PC)

ORDER STRIKING IMPROPER PLEADING

(Doc. No. 35)

ORDER DIRECTING CLERK TO REVISE
DOCKET TO REFLECT ONLY NAMED
DEFENDANT

(Doc. No. 18)

Pending before the Court is Plaintiff's pleading titled "Response to Exhaustion Motion," filed June 17, 2024. (Doc. No. 35, "Response"). In his pleading, Plaintiff describes in detail his efforts to exhaust his administrative remedies through the CDCR grievance process. (*See id.* at 1-5). Plaintiff also attaches 13 pages of exhibits to his pleading. (*Id.* at 6-18). Plaintiff's Response is an improper pleading, and the Court will order the Clerk of Court to strike it from the record.

The Federal Rules of Civil Procedure designate proper pleadings. Fed. R. Civ. P. 7(a)(1)-(7). Further, Local Rule 230(l) sets forth the procedure for the filing of motions in prisoner civil rights cases and provides that a party responding to a motion may file an opposition within 21 days after the date of service of the motion. (E.D. Cal. 2023). A prisoner need not plead or prove exhaustion. Instead, it is an affirmative defense that must be raised and proved by defendant. *Jones v. Bock*, 549 U.S. 199, 211 (2007). Here, the docket reflects that there is no

1 pending motion before the Court, related to exhaustion of administrative remedies or otherwise.
2 Thus, Plaintiff's Response is not related to any motion currently pending before the Court and the
3 Court will strike it as an improper pleading under Rule 7 and Local Rule 230(l)1. (See Doc. No.
4 4 at 3 ¶ J) (noting that the Court will not serve as a repository for evidence or documents
5 unrelated to a pending motion for summary judgment). Should Defendant move for summary
6 judgment on the exhaustion issue, Plaintiff may file a response and any exhibits in support at that
7 time.

8 Accordingly, it is hereby **ORDERED**:

9 1. The Clerk of Court is directed to **STRIKE** Plaintiff's Response to Exhaustion Motion
10 (Doc. No. 35) as an improper pleading from the docket.

11 2. The Clerk of Court is directed to revise the docket to reflect that Plaintiff proceeds in
12 this case against Defendant Tapia only, pursuant to his First Amended Complaint (Doc. No. 18)
13 which no longer names Defendant Prada.

14
15 Dated: June 18, 2024


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE